



## UNITED STATES PATENT AND TRADEMARK OFFICE

DIRECTOR OF THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BOARD OF PATENT APPEALS AND INTERFERENCES  
BOX INTERFERENCE, WASHINGTON, D.C. 20231

MAILED

OCT 19 2005

PAT. & T.M. OFFICE  
BOARD OF PATENT APPEALS  
AND INTERFERENCES

Filed by: Judge Michael P. Tierney  
Telephone: 571-272-9797  
Facsimile: 571-273-0042

Applicants: JOHNSON  
Application No.: 09/485,512  
Filed: 05/05/00  
For: Recombinant porcine adenovirus vector

The above-identified application or patent has been forwarded to the Board of Patent Appeals and Interferences because it is adjudged to interfere with another application or patent. An interference has been declared. The interference is designated as No. 105,358.

Notice is hereby given the parties of the requirement of the law for filing in the Patent and Trademark Office a copy of any agreement "in connection with or in contemplation of the termination of the interference." 35 U.S.C. § 135(c).

/Michael P. Tierney/  
MICHAEL P. TIERNEY  
Administrative Patent Judge

Paper 1

Mail Stop Interference  
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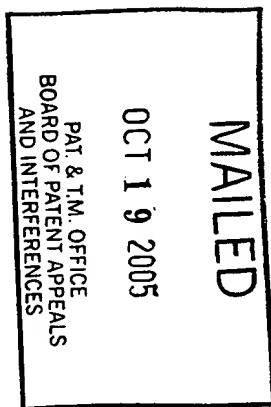
Filed: 19 October 2005

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

POLICE S. REDDY, SURESH K. TIKOO,  
and LORNE A. BABIUK  
Junior Party  
(U.S. Patent No. 6,492,343),

v.  
MICHAEL A. JOHNSON, JEFFREY M. HAMMOND,  
RICHARD J. MCCOY and MICHAEL G. SHEPPARD  
Senior Party  
(U.S. Application No. 09/485,512).



Patent Interference No. 105,358  
(Technology Center 1600)

**DECLARATION - Bd.R. 203(d)**

Before Michael P. Tierney, Administrative Patent Judge.<sup>1</sup>

**Part A. Declaration of interference**

An interference is declared (35 U.S.C. § 135(a)) between the above-identified parties. Details of the application(s), patent (if any), reissue application (if any), count(s) and claims designated as corresponding or as not corresponding to the

<sup>1</sup>As part of Board efforts under the Government Paperwork Elimination Act, signatures on papers originating from the Board are being phased out in favor of a completely electronic record. Consequently, in this case papers originating at the Board will not have signatures. The signature requirements for the parties have not changed. See, e.g., 37 C.F.R. § 10.18.

count(s) appear in Parts E and F of this DECLARATION.

**Part B. Judge managing the interference**

Administrative Patent Judge Michael P. Tierney has been designated to manage the interference. 37 CFR § 41.104(a) [Bd. R. 104(a)].

**Part C. Standing order**

A Trial Section STANDING ORDER [SO] accompanies this DECLARATION.

The STANDING ORDER applies to this interference.

**Part D. Initial conference call**

A telephone conference call to discuss the interference is set for **2:00 p.m. on December 13, 2005** (the Board will initiate the call).

No later than **two business days** prior to the conference call, each party shall file and serve by facsimile (SO ¶ 4.5) a list of the motions (Bd. R. 120; Bd. R. 204; SO ¶ 26) the party intends to file.

A sample schedule for taking action during the motion phase appears as Form 2 in the STANDING ORDER. Counsel are encouraged to discuss the schedule prior to the conference call and to agree on dates for taking action. A typical motion period lasts approximately eight (8) months. Counsel should be prepared to justify any request for a shorter or longer period.

A copy of default times for taking action during the preliminary motion phase of the interference accompanies the NOTICE DECLARING INTERFERENCE. Counsel should be prepared to justify altering the default times.

The Board is conducting an electronic filing and a DVD pilot project. Copies of the procedures are attached to this order. Counsel should be prepared to discuss participation in the electronic filing pilot project.

**Part E. Identification and order of the parties**

**Junior Party**

Named Inventors: POLICE S. REDDY, MARYLAND, USA  
SURESH K. TIKOO, SASKATOON, CA  
LORNE A. BABIUK, SASKATOON, CA

Patent: U.S. Patent No. 6,492,343, issued December 10, 2002,  
based upon U.S. Application 09/292,034, filed April 14, 1999

Title: PORCINE ADENOVIRUS TYPE 3 GENOME

Assignee: University of Saskatchewan

Accorded Benefit: U.S. Provisional Application 60/081,882, filed April 15, 1998

Senior Party

Named Inventors: MICHAEL A. JOHNSON, VICTORIA, AU  
JEFFREY M. HAMMOND, VICTORIA, AU  
RICHARD J. McCOY, VICTORIA, AU  
MICHAEL G. SHEPPARD, VICTORIA, AU

Application: U.S. Application No. 09/485,512, filed May 5, 2000

Title: RECOMBINANT PORCINE ADENOVIRUS VECTOR

Assignee: Commonwealth Scientific and Industrial Research Organization  
Pig Research Development Corporation

Accorded Benefit: PCT/AU98/00648, filed August 14, 1998  
Australian PO 8560, filed August 14, 1997

The senior party is assigned exhibit numbers 1001-1999. The junior party is assigned exhibit numbers 2001-2999. Bd. R. 154(c)(1). The senior party is responsible for initiating settlement discussions. SO ¶ 18.

**Part F. Count and claims of the parties**

**Count 1**

A vector according to Claim 30 of U.S. Application 09/485,512 or Claim 21 of U.S. Patent No. 6,492,343.

The claims of the parties are:

Johnson, U.S. Application 09/485,512: 1, 2, 4, 26, 28, 30-32, 39, 40, 42 and 44-73  
Reddy, U.S. Patent No. 6,492,343: 1-44

The claims of the parties which correspond to Count 1 are:

Johnson, U.S. Application 09/485,512: 1, 2, 4, 26, 30-32, 44-62, 65, 66, 69-70, 72, and 73  
Reddy, U.S. Patent No. 6,492,343: 1-14, 16-19, 21-28, and 30-44

**Count 2**

A vector according to Claim 28 of U.S. Application 09/485,512.

The claims of the parties which correspond to Count 2 are:

Johnson, U.S. Application 09/485,512: 1, 2, 4, 26, 28, 31-32, 44-62, and 71-73  
Reddy, U.S. Patent No. 6,492,343: 1-14, 16-19, 22-28 and 31-44

The claims of the parties which do not correspond to Count 1 or Count 2, and therefore are not involved in the interference, are:

Johnson, U.S. Application 09/485,512: 39, 40, 42, 63, 64, and 67-68  
Reddy, U.S. Patent No. 6,492,343: 15, 20 and 29

**Part G. Heading to be used on papers**

The heading in SO Form 1 must be used on all papers filed in this interference.

See SO ¶ 7.2.1. The administrative patent judge and parties must be indicated as follows:

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES  
(Administrative Patent Judge Michael P. Tierney)

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POLICE S. REDDY, SURESH K. TIKOO,  
and LORNE A. BABIUK  
Junior Party  
(U.S. Patent No. 6,492,343),

v.

MICHAEL A. JOHNSON, JEFFREY M. HAMMOND,  
RICHARD J. MCCOY and MICHAEL G. SHEPPARD  
Senior Party  
(U.S. Application No. 09/485,512).

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Patent Interference No. 105,358  
(Technology Center 1600)

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**Part H. Order form for requesting file copies**

When requesting copies of files, use of SO Form 4 will greatly expedite processing of the request. Please attach a copy of Part E of this DECLARATION with a hand-drawn circle around the patents and applications for which a copy of a file wrapper is requested.

### **Part I. Required paragraph for affidavits and declarations**

The Board has recently experienced a rash of cases in which a witness has belatedly advanced reasons why he or she would be unable to appear for cross examination at a reasonable time and place in the United States. Consequently, the Board is requiring the following paragraph to be included on the signature page of all affidavits (including declarations) filed in this case to prevent surprise and hardship to the party relying on the testimony of the witness:

In signing this affidavit/declaration, I recognize that the affidavit/declaration will be filed as evidence in a contested case before the Board of Patent Appeals and Interferences of the United States Patent and Trademark Office. I also recognize that I may be subject to cross examination in the case and that cross examination will take place within the United States. If cross examination is required of me, I will appear for cross examination within the United States during the time allotted for cross examination.

Enc:<sup>2</sup>

- (1) Copy of STANDING ORDER
- (2) Copy U.S. Patent 6,492,343
- (3) Copy of claims of U.S. Application 09/485,512
- (4) Copy of default time for taking action
- (5) Copy of procedures regarding electronic filing
- (6) Copy of procedures regarding DVD pilot project

Revised January 2005

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<sup>2</sup>No PTO-850 is included.

cc (via overnight delivery):

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